

IN THE SUPREME COURT OF IOWA

No. 16-0267

STATE OF IOWA,)
Plaintiff-Appellee,)
)
vs.)
)
MICHAEL SCHEFFERT,)
Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT FOR BLACK HAWK
COUNTY THE HONORABLE JOSEPH MOOTHART, JUDGE

REPLY TO PETITION FOR REHEARING TO SUPREME COURT
(Decision date: Nov. 17, 2017)

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ARGUMENT

I. THE STATE IS WRONG AS IT ARGUES FOR THE FIRST TIME IN ITS APPLICATION FOR REHEARING THAT §350.10 SUPERCEDES §350.5 AND NO SIGNS MUST BE POSTED TO EFFECT A PARKING CLOSING TIME

Standard of Review:

Review is *de novo*. *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997).

Preservation of Error: Appellant raised the §350.5 issue in his Final Brief.

Final Brief at 9-11. The §350.5 issue is the primary argument of Appellant In his Final Brief – that the failure to post signs create a failure in the stop in that the closing time was not in place and no valid stop for a violation of §461A.46 could be found.

Merits: Defendant was pulled over on a public roadway absent signage that it was a county park and without a posting of park hours. Absent such designations it is unreasonable to uphold the constitutionality of the Stop under the Iowa and U.S. Constitutions. Iowa and Constitutional Arguments were properly raised. The Supreme Court properly reasoned in its November 17, 2017 decision that the District Court denial of the Motion to

Suppress should be reversed. The Court of Appeals reversed on the reasoning that the State at the Motion to Suppress failed to admit the ordinance. However, Appellant argued in the Final Brief and in this Response to the Petition for Rehearing that signs must be posted to designate a park area and the times when such areas are closed to the public. That was the failing of the stop and the issue was preserved.

CONCLUSION

The underlying basis for the stop fails and the conviction and sentence should be reversed and the case dismissed at State cost. The stop was conducted without showing that the County Board under Iowa Law had in fact adopted a park closing time. Further, there was no signage of the park being closed or that the roadway in question was in fact inside a park. The stop is unconstitutional under Iowa and Federal constitutions.

ATTORNEY COST CERTIFICATE

I certify that the true cost of producing the required copies of this brief was \$ ____1.00____. I paid that amount in full.

_____/s/ *Thomas J. Viner* ____
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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R.App. 6.903(1)(g)(1) or (2) because this brief contains 331 words excluding the parts of the brief exempted by Iowa R.App.P. 6.903(g)(1).
2. This brief complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirement of Iowa. R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2011 in 14-point Times New Roman font.

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CERTIFICATE OF FILING AND SERVICE

I, Thomas J. Viner, hereby certify that I have filed this Proof Brief by
the EMDS filing system on December 21, 2017.

Clerk of the Supreme Court of Iowa, Blackhawk County Attorney, Iowa
Attorney General

I further certify that I served this RESPONSE TO PETITION FOR
REHEARING by U.S. mail to each of the following on December 22, 2017:

Defendant, Michael Scheffert

Blackhawk County Courthouse
Clerk of Court

Honorable Nathan A. Callahan.

_____/s/ *Thomas J. Viner* ____
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